IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No.2486 of 2006

Vignaharta Builders & Projects
Pvt Ltd. ..Petitioners.

Vs

Mun Corpn for Gr Mumbai. ..Respondents

Mr A.S. Khandeparkar i/b M/s Madekar and Co
for the petitioners

Ms A.K. Savla for respondents.

CORAM: SWATANTER KUMAR,C.J.,&
S.R.SATHE, J.

Date of reservation April 2, 2007.
Date of delivery April ,2007

JUDGMENT(Per SWATANTER KUMAR, C.J.):

1. The Municipal Corporation of Greater Mumbai is the owner of the land bearing City Survey Nos 49, 1/49, 2/49, and 123 of Parel and Seweree Division. A part of the said land was given on vacant land tenancy basis to one Suleman Adam Ghaswala, whereafter it came to be known as Ghaswala Compound. Ghaswala further let out a small portion of the land and structure to different people on monthly tenancy basis and the structure on which the building of the respondents existed

also had several municipal tenants. The buildings/chawls were in extream dilapidated condition and were beyond repair. The authorities formed an opinion and it was found that it would be more expedient to redevelop the building under Regulation 33 (7) of the Development Control Regulations,1991. On an initiative adopted by the tenants /occupants of the said buildings, they formed a cooperative society being Lalbaugcha Raja Cooperative Housing Society Ltd. for the purpose of redeveloping the building in accordance with the provisions of law. The Municipal Corporation initiated eviction proceedings against Ghaswala building and other unauthorised occupants under the provisions of section 105B of the Bombay Municipal Corporation Act, 1888, hereinafter referred to as the “Act”. Orders were passed and symbolic possession of the buildings was taken. Some of the occupants claiming to be the tenants, filed writ petition in this court being Writ Petition N. 475 of 1986. Eviction proceedings were also initiated under section 105B of the Act and after holding detailed inquiry, the Inquiry Officer issued show cause notices to the occupants as to why they be not declared as unauthorised occupants. Vide order dated 9.2.1991, the court had directed the respondents to conduct a

proper inquiry and also consider the question relating to the alternate accommodation for the purpose of their residence. The writ petition was disposed of. After inquiry against the occupants, against the order passed by the respondents, the occupants preferred appeals before the Bombay City Civil Court, Bombay, which set aside the order of eviction vide order dated 7.2.1995. After the eviction orders were set aside, fresh inquiry was held and finally the occupants were held as unauthorised occupants by the order of the competent authority. Appeals against such orders were also dismissed by the Civil Court. The occupants filed writ petitions in this court which were again dismissed vide order dated 10.3.1995. The names of the unauthorised occupants in the transit camp were duly furnished by the petitioners on 15.2.1996.

2. It may be noticed at this stage that the proposal of the petitioner society for development of the area was considered and scrutinised by a Committee formulated for consideration of redevelopment proposal in terms of Regulation 33(7). In principle the proposal was accepted. The Committee issued a letter of intent and also passed a final resolution being

Resolution No.325 sanctioning the said proposal on 24.12.1996. This resolution was further approved by the Corporation vide Resolution No.1041 dated 6.1.1997 and the petitioners were appointed as developers of the said property. The petitioners were permitted to construct the transit camps on the nearby property bearing Survey No 48 also known as Chhatrapati Shivaji Maharaj Kridangan.

3. The claim of the unauthorised occupants for alternate accommodation was also rejected and, therefore, the petitioners vide their letter dated 15.2.2006 raised a plea that the respondents should take steps to remove the unauthorised occupants. The Corporation vide its letter dated 28.3.2006 had called upon the petitioners to demolish the structures. This letter was replied by the petitioners on 5.4.2006 stating that the respondents should remove the unauthorised occupants. Number of letters were exchanged between the Corporation and the petitioners with regard to the removal of the unauthorised occupants and demolition of the structures. Finally, the Corporation vide its letter dated 8.8.2006 threatened

to take coercive action against the petitioners and the occupants. The said letter reads as under:

"STOP WORK .NOTICE UNDER SECTION 354 A

OF MUMBAI MUNICIPAL CORPORATION ACTION

Notice No. EEBPC/5578/FS/A dated 21.08.2006

Office of the

Executive Engineer

Building Proposals (City) III

Municipal E Ward Office

Building, 3rd floor

10 Shaikh Hafizuddin Marg

Byculla Mumbai 400008

To

M/s Vignaharta Builders and Projects Pvt Ltd

47/5-1 Ganesh Nagar, Lalbaug Market

Lalbaug, Mumbai 400012

2 Site in Charge.

1. Whereas under section 68 of the Mumbai Municipal; Corporation, Act the Municipal Commissioner has duly empowered me to exercise the powers and functions conferred upon him under section 354A of the Mumbai Municipal Corporation Act and whereas I am satisfied that you have unlawfully commenced/been unlawfully carrying on erection of building/erection of building/execution of work described in the Schedule below located at C.S.No.of C.S.No.49, 1/49, 2/49 and 123 of Patel Seweree Division, at Lalbaug (Municipal acquired property) Building No.1.

2. I hereby direct you to stop the erection of the said building/ execution of the said work, forthwith.

3. If you are in possession of any permission approved by the Competent Authority in favour of the erection of the building of execution of the

work, you are, hereby directed to produce the same within 24 hours from the service of this notice, in my office.

4. If you fail to comply with the aforesaid directions, I shall under section 354A and in exercise of powers and functions conferred on me as aforesaid , without any further notice, cause the said building or work to be removed or pulled down at your risk and costs.

5. Further note that you and/or any person directing/carrying out such erection/work shall be removed by police officer from the place where the building is being erected or work is being executed.

6. And that any material, machinery, equipment, device or articles used in the process of erection of the building or execution of work will

be caused to be removed without any further notice at your risk and cost.

SCHEDULE

(Description of unauthorised work)

For Non demolition to transit camp.

Signature sd/- 19.8.2006 dated 19.8.2006

Name : Shri N.R. Khanolkar

Designation: Asst Eng (B.P) (City) II

Naik FS5578A"

4. The learned counsel appearing for the Corporation, while referring to the reply affidavit filed by the Corporation, contended that the writ petition deserves to be dismissed even on legal as well as equitable grounds. According to the Corporation, the petitioners have not joined the occupants as parties to this petition, who are occupying the transit camp unauthorisedly. The petition suffers from the defect of non joinder of necessary parties. On merits it is contended that Ghaswala had unauthorisedly occupied the land admeasuring 62 sq yards, in addition to what was let out to him. The eviction proceedings were taken and he was evicted from that part of

the land. The facts with regard to the conducting of fresh inquiry are not disputed and it is stated that on 1.2.1991 an order was passed in Writ petition No 475 of 1986 and vide order dated 10.3.2005 Writ Petition Nos. 9265, 1972 and 9276 and 9768 of 2004 filed by the unauthorised occupants were also dismissed. Certain further facts have also been disclosed in the reply affidavit, which remained unrebutted in court and they have a bearing on the matter,which read as under:

> “f) I say that in the meantime, the Municipal property under reference were taken up in redevelopment under DCR 33(7) by the petitioners. I say that at the time of commencement of construction of rehab building, the structures of the occupants were found coming in the alignment of the development. I say that at that time some of these occupants have moved the Court seeking the stay against the demolition of old existing structures. I say that the developer i.e. Petitioners herein thereafter at their own risk and consequences have shifted these occupants in

the transit accommodation. I say that as such it is the responsibility of petitioners to vacate and demolish the transit camp.

g) I say that upon completion of rehab competent, the eligible municipal tenants have been shifted in newly constructed building. I say that transit accommodation vacated by these eligible tenants is required to be demolished . However, 20 Nos of occupants are still in occupation of the transit accommodation. I say that petitioners have thereafter submitted completion certificate in respect of rehab components and have asked for the issuance of the occupation certificate. However, since it is the obligatory duty of the developer to comply with the terms and conditions of the sanctioned plan and LOD, ,th petitioners/developer was asked to demolish the transit camp. I say that since the petitioners have failed to demolish the transit camp stop work notice u/s 354A of the

MMC Act came to be issued in respect of the said building.

h) I say that petitioners by letter dt 6.1.2005, 19th April, 2005, 13th February 2006, 28th March 2006 and 19th April 2006 were asked to demolish the transit camp. I say that since the petitioners on his own risk have shifted these occupants who have declared as unauthorised and against whom the eviction oder has been passed to the transit camp to enable them to commence the construction of the proposed buildings, it is the duty of the petitioners to demolish the said transit camp"

5. At the outset we should notice that the petitioners have not approached this court with clear facts and clean hands; the facts which were within their knowledge have not been disclosed. Earlier writ petitions were filed by these very occupants which were dismissed by this court. Earlier writ petitions were filed by the unauthorised occupants and now the petitioners have approached the court by means of present writ

petition, indirectly claiming the same reliefs. While disposing of the writ petitions vide order dated 10.3.2005 the court had directed the Municipal Corporation to consider any representation, which the petitioners may make for the purpose of alternate accommodation, or rehabilitation. The representation, if filed, was required to be disposed of while keeping the policy of the Corporation in mind and, further the Corporation was restrained from taking forcible action for a period of four weeks. This order was passed at the instance of the unauthorised occupants and it is obvious from the language of the order, the contentions raised were not accepted by the court and impugned action was not set aside. After passing of the said order,petitioners are totally silent as to what transpired thereafter and now present petition has been filed. In the notice issued by the Corporation, a clear stipulation has been made that if the petitioners were in possession of any premises approved by the competent authority in favour of erection of the building or execution of the work, they were directed to produce the relevant documents. It is conceded before us that no documents have been produced by the petitioners and at the same time they have not taken any action in regard to the

demolition of the tenements/ temporary structures as well as removal of the unauthorised occupants.

6. In terms of the affidavit filed on behalf of the Corporation it has been specifically stated that upon completion of the rehabilitation components, eligible municipal tenants have been shifted in the newly constructed building and have vacated transit accommodation. Nearly 20 occupants remained in unauthorised occupation of the transit accommodation and the completion certificate has been issued and still it is the obligation of the petitioners to remove those persons and demolish the transit camp. In regard to this, reliance is also placed on an undertaking, which was given by the petitioners at the time of sanctioning of the plan and IOD. Inspite of repeated requests they have failed to demolish the transit camp. The petitioners having failed to carry out their obligation as contemplated under the provisions of the Act/sanctioned plan and in terms of their own undertaking, despite notice, they cannot claim any benefit in this petition.

7. Resultantly, we have no hesitation in dismissing the present writ petition. However we observe that the petitioners

are at liberty to reply to the impugned notice and submit any documents before the competent authority, within one week from the date of the passing of this order, whereafter the Corporation shall proceed in accordance with law.

Writ petition is disposed accordingly, leaving the parties to bear their own costs.

CHIEF JUSTICE

S.R.SATHE,J.